#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application

Inventor(s):

EUGENE F. DUVAL

Appln. No.:

10/816,616

Filed:

Confirm. No.: 9800 April 2, 2004

Title: DUAL PULLEY CONSTANT FORCE

**MECHANISM** 

PATENT APPLICATION

Art Unit:

3862

Customer No.: 23910

### DECLARATION AND POWER OF ATTORNEY FOR PATENT APPLICATION (PRIORITY UNDER 35 U.S.C. §119/§120/§365)

As a below named inventor, I hereby declare that my residence, mailing address and citizenship are as stated below next to my name. I believe that I am the original, first and sole inventor (if only my name is listed below) or the original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention identified by "Title" above and by the specification identified below (check applicable ones):

ecification:		
was filed with the international);	ne above-identified "Appln. No." and "Fil	led" date (national or PCT
	-	cation including the claims
for patent or inventor's cast one country other that on for patent or inventor's cubject matter claimed in the	ertificate, or §365(a) of any PCT internant the United States, listed below and have certificate, or PCT international application has application and having a filing date (1) be	ational application which e also identified below any , filed by me or my assignee efore that of the application
F	Prior Foreign Application(s)	
Country	Day/Month/Year Filed	<u>Priority Claimed</u> <u>Yes</u> <u>No</u>
	is attached heret was filed with the international); was amended or eviewed and understand the ny above-identified amen wledge a duty to disclose to patentability of the app y claim foreign priority for patent or inventor's cast one country other than on for patent or inventor's cabject matter claimed in the ty is claimed, or (2) if no	is attached hereto; was filed with the above-identified "Appln. No." and "File international); was amended on (or through)  eviewed and understand the contents of the above-identified specificanty above-identified amendment(s).  wledge a duty to disclose to the U.S. Patent and Trademark Office all to patentability of the application as defined in Title 37, Code of File of the patent or inventor's certificate, or §365(a) of any PCT internast one country other than the United States, listed below and have on for patent or inventor's certificate, or PCT international application abject matter claimed in this application and having a filing date (1) bety is claimed, or (2) if no priority is claimed, before the filing date  Prior Foreign Application(s)

I hereby claim the benefit under 35 U.S.C. §119(e) of any United States provisional application(s) listed below:

U.S. Provisional Application(s)			
	Application No.	Day/Month/Year Filed	
a)	60/460,771	April 4, 2003	

I hereby claim the benefit under 35 U.S.C. §120 of any United States application(s), or §365(c) of any PCT international application designating the United States, listed below and insofar as the subject matter of each of the claims of this application is not disclosed in such prior United States or PCT International applications in the manner provided by the first paragraph of 35 U.S.C. §112, I acknowledge the duty to disclose material information as defined in 37 C.F.R. §1.56 which occurred between the filing date of the prior applications and the national or PCT international filing date of this application:

Prior U.S. or PCT Application(s)				
Application No.	Day/Month/Year Filed	Status: (patented, pending, abandoned)		
a)				

### Power of Attorney

I hereby appoint the attorneys associated with Customer No. 23910, at the firm Fliesler Meyer, LLP, located at Four Embarcadero Center, Fourth Floor, San Francisco, California 94111, Telephone (415) 362-3800; as my attorneys, with full power of substitution and revocation, to prosecute this application and transact all business in the United States Patent and Trademark Office connected herewith.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

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(1) Full name of sole	
or first inventor:	EUGENE F. DUVAL
(1) Residence:	2141 Camino a Los Cerros, Menlo Park, California 94025
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(1) Citizenship:	U.S.A.
(1) Citizenship:	(1) Inventor's signature:
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# Title 35, United States Code, §112 (first paragraph) SECTION 112. SPECIFICATION

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

## Title 35, United States Code §119 (first paragraph) BENEFIT OF EARLIER FILING DATE IN FOREIGN COUNTRY; RIGHT OF PRIORITY

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.
- (b) No application for patent shall be entitled to this right of priority unless a claim therefor and a certified copy of the original foreign application, specification, and drawings upon which it is based are filed in the Patent and Trademark Office before the patent is granted, or at such time during the pendency of the application as required by the Commissioner not earlier than six months after be made by the patent office of the foreign country in which filed and show the date of the application and of the filing of the specification and other papers. The Commissioner may require a translation of the papers filed if not in the English language and such other information as he deems necessary.
- (c) In like manner and subject to the same conditions an requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been

- laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.
- (d) Applications for inventors' certificate filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent or for an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the same time of such filing.
- (e)(1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application.
- (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) of this title has been paid and the provisional application was pending on the filing date of the application for patent under section 111(a) or section 363 of this title.

Attorney Docket No.: DUVL-01001US1
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### <u>Title 35, United States Code §120</u> SECTION 120. BENEFIT OF EARLIER FILING DATE IN THE UNITED STATES

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date

of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

### Title 35, United States Code §365

#### SECTION 365. RIGHT OF PRIORITY; BENEFIT OF THE FILING DATE OF A PRIOR APPLICATION

- (a) In accordance with the conditions and requirements of subsections (a) and (d) of section 119 of this title, a national application shall be entitled to the right of priority based on a prior filed international application which designated at least one country other than the United States.
- (b) In accordance with the conditions and requirements of this section 119(a) of this title and the treaty and the Regulations, an international application designating the United States shall be entitled to the right of priority based on a prior foreign application, or a prior international application designating at least one country other than the United States.
- (c) In accordance with the conditions and requirements of section 120 of this title, an international application designating the United States shall be entitled to the benefit of the filing date of a prior national application or a prior international application designating the United States, and a national application shall be entitled to the benefit of the filing date of a prior international application designating the United States. If any claim for the benefit of an earlier filing date is based on a prior international application which designated but did not originate in the United States, the Commissioner may require the filing in the Patent and Trademark Office of a certified copy of such application together with a translation thereof into the English language, if it was filed in another language.

# <u>Title 37, Code of Federal Regulations, §1.56</u> SECTION 1.56. DUTY TO DISCLOSE INFORMATION MATERIAL TO PATENTABILITY

- (a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98.\* However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
  - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
  - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
  - (1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or
  - (2) It refutes, or is inconsistent with, a position the applicant takes in:
    - (i) Opposing an argument of unpatentability relied on by the Office; or
    - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
  - (1) Each inventor named in the application;
  - (2) Each attorney or agent who prepares or prosecutes the application; and
  - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- \* §§1.97(b)-(d) and 1.98 relate to the timing and manner in which information is to be submitted to the Office.